IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.E.A. No.43 of 2005
Date of decision: October 17, 2006

Commissioner, Central Excise Commissionerate, Delhi-IV, Faridabad

-----Appellant

Vs.

M/s Escorts Limited, Faridabad.

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. Gurpreet Singh, Advocate
for the appellant.

Mr. Vinod Kumar Aggarwal, Advocate and
Mr. Rohit Khanna, Advocate
for the respondent.

ORDER:

This appeal has been preferred under Section 35(G) of the Central Excise Act, 1944 (for short, "the Act") by the revenue against the order dated 13.7.2000 passed by the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi [Now known as Central Excise & Service Tax Appellate Tribunal (CESTAT)].

The period to which the present case pertains, a petition was maintainable before the Court of competent jurisdiction seeking a direction to the Tribunal for reference of questions of law to the Court for opinion. Limitation provided for filing the petition for directions to make reference of a question of law at the relevant time was 180 days from the date of receipt of order, as per provisions of Section 35H of the Act. The present appeal was filed in this Court on 19.01.2005 along with an application for condonation of delay of 1461 days in filing the appeal. Only reason mentioned in the application for condonation of delay is

that the petition was earlier filed before the Delhi High Court on 30.01.2001, but in terms of the judgment dated 25.03.2001 of Delhi High Court reported as ***Commissioner of Central Excise, Delhi-III*** v. ***Enkay HWS India Ltd.*** 2002(139) ELT 21, reference lies only to the High Court within whose territorial jurisdiction original adjudicating authority functions. On 27.05.2004, the counsel in Delhi High Court sent the case back, which was entrusted to the counsel in the Punjab and Haryana High Court, Chandigarh.

It is patent that the judgment of Delhi High Court relied upon is reported in the year 2002, though dated 25.3.2001, and there is no explanation as to why, thereafter, no steps were taken for filing the petition in the Court of competent jurisdiction without any further delay. It has not been mentioned as to what happened to the petition filed in Delhi High Court on 30.01.2001 till the same was returned back by the counsel in the Delhi High Court on 27.05.2004. No order passed by Delhi High Court has been placed on record. On 13.07.2006, when the matter came up for hearing, on the statement made by learned counsel for the revenue that by mistake the case has been filed as Central Excise Appeal, while in fact, it should be Central Excise Case, liberty was granted to make necessary correction and file amended petition. Considering the fact that there was substantial delay in filing of the appeal, notice was issued only on the application for condonation of delay. Needful has not been done. Letter has been circulated seeking adjournment for doing same. However, at the time of hearing, learned counsel for the revenue stated that now the amended petition is available.

Counsel for the assessee submitted that there is hardly any explanation for the gross delay in filing the appeal which was clearly a case of gross negligence. The provisions of Limitation Act providing for condonation of delay cannot be allowed to be misused in the manner suggested by the petitioner. Casualness, laxity and negligence does not fit in the reasonable/sufficient causes for permitting condonation of delay.

After hearing learned counsel for the parties, we find merit in the objection raised on behalf of the assessee.

Even by taking a most liberal view, the delay cannot be held to be on account of any sufficient cause.

We have also dealt with another matter of the same nature on 16.10.2006 in C.E.C. No.39 of 2004 ***Commissioner of Central Excise, Panchkula*** **v. M/s Jamna Auto Industries** where also with similar allegations, condonation of delay of 1125 days was sought which was declined by this Court.

Accordingly, finding no merit in the plea seeking condonation of delay of 1461 days in filing the petition/appeal, the application is dismissed, consequently, the appeal/petition is also dismissed.

Since we have come across a large number of cases, involving substantial revenues, which have not been pursued with diligence, a copy of this order be sent to the Central Board of Excise and Customs for taking necessary corrective steps to safeguard the public revenue.

(ADARSH KUMAR GOEL)
JUDGE

October 17, 2006
ashwani

(RAJESH BINDAL)
JUDGE